



1232

SEP 23 1999

SUTTER EXTENSION WATER DISTRICT

4525 FRANKLIN ROAD
YUBA CITY, CALIFORNIA 95993
AREA CODE 916 673-7138
FAX 916 673-7194

September 21, 1999

CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

**Re: Comments of the Sutter Extension Water District Board of Directors to
the June 1999 CalFed Bay-Delta Second Draft Programmatic EIS/EIR
(hereafter '99 CalFed EIS/EIR)**

Ladies and Gentlemen:

Sutter Extension Water District (SEWD) submits its comments on the foregoing described document. But first, we advise you of some historical background relevant to the existence, formation and water rights acquired and operated by SEWD.

WHAT IS SEWD?

SEWD was formed prior to 1950. SEWD acquired water rights, distribution and conveyance facilities from the Sutter Butte Canal Company which had acquired distribution and conveyance facilities with pre-1914 water rights and supplies in or prior to 1911 from Sacramento Canal Company/Butte County Canal Company. SEWD has operated since its formation prior to 1950 under and by virtue of Division 13 of the California Water Code as a California Water District. Its approximate 25,000 irrigated acres produce predominantly rice with assorted row crops, orchard lands and pasture. No domestic water supplies are served. Winter deliveries for rice straw decomposition and waterfowl continue through the middle of January. The system is generally decharged of water between the middle of January and the start of irrigation season; i.e., March 15 to April 15 depending upon the water year, current weather and precipitation.

SEWD agreed with DWR in 1969 to store SEWD pre-1914 water rights and supplies in the newly constructed and operating Oroville Dam and Reservoir together with three (3) other operating water districts located in Butte County. Diversion and delivery schedules are coordinated on a daily/weekly basis during each irrigation season with DWR.

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 2

GENERAL COMMENTS

This '99 CalFed EIS/EIR establishes a "Preferred Program Alternative" which essentially eliminates water storage as an element and instead requires the effective conveyance of water through or around the Delta. The June 1999 documents also estimate Stage 1 costs at \$5,169,000,000 which costs are current as of 1999, yet estimates spending only \$70,000,000 of this sum for what is referred to as "integrated storage investigation." However, storage studies and particularly off-stream storage studies, have developed numerous feasible storage locations. We now want a commitment from CalFed to build on-stream or off-stream surface water storage facilities, either north and/or south of the Delta.

Unfortunately, like the '98 CalFed EIS/EIR, the '99 CalFed EIS/EIR is "general." These comments then are not site-specific because the '99 CalFed EIS/EIR addresses a "program" level and not a site-specific level. Our comments, then, are directed to areas of interest and concern to SEWD. As CalFed continues throughout the completion of Stage 2 and the implementation process in Stage 3; site-specific programs developed by CalFed which impact the SEWD will be commented upon.

Even though site-specific comments of the CalFed June 1999 EIS/EIR are not developed; SEWD does have some comments on trends, positions, goals/objectives and costs taken in the June 1999 documents which SEWD believes adversely impacts SEWD's existing and future development.

Our concern with the '98 CalFed EIS/EIR was the generality of the comments in those documents that failed to address "causation" for the Bay-Delta problem and the "cost" of fixing the problem. We see these two same primary elements as missing from the '99 CalFed EIS/EIR documents with the exception of a general estimate of current costs at the sum of \$5,169,000,000.

Let's first address the "missing causation" element. The "Executive Summary" to the '99 CalFed EIS/EIR described CalFed as a program which is a cooperative interagency effort involving 15 state and federal agencies which are responsible for the third paragraph in the June 1994 Framework Agreement which included solving four issues: 1) water quality issues; 2) design and operation of export systems; 3) levee and channel maintenance; and 4) means of protecting the estuary and its fish and wildlife resources. Unfortunately, there is nothing in the CalFed Executive Summary or in the 4,700+ pages of supporting documents which discusses the burden of fixing problems, such as, fish and fish habitats, based upon a "causation factor." Since CalFed describes the purpose of its program as developing and implementing a long-term plan to "restore ecological health and improve water management for beneficial uses" within the Bay-Delta System; at some point in time it will need to discuss the "causation factor" in order to achieve some meaningful consensus on costs.

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 3

Now, CalFed describes four sources to correct Bay-Delta problems which are: 1) ecosystem quality; 2) water quality; 3) water supply reliability; and 4) levee system integrity. But without a discussion of the cause of deteriorating ecosystem quality, reduced water quality, lack of water supply reliability and lack of levee system integrity which exists in the 5 California Counties constituting the 738,000 acres in the Bay-Delta System; SEWD believes that the CalFed Program is failing to recognize an important concept which will at some point in time have to be recognized and debated in order to try and achieve a consensus which will fix a meaningful and cost-efficient remedy for Bay-Delta.

This continued "causation neutral analysis" taken by the '99 CalFed EIS/EIR is an insurmountable problem. It is appropriate here to explain that SEWD is a Member of the Delta Tributary Agencies Committee (DTAC). DTAC commented on the decline of fish and wildlife resources in the Bay-Delta Estuary to a June 1994 SWRCB Workshop as follows:

"The Delta is not static-it has always been in a constant state of change driven by tides, winds, precipitation, and the influences of man. In this century, the State's population has gone from 1.5 million in 1900 to 20 million in 1970 to over 30 million today. This population growth has put tremendous pressures on all of the State's resources, including the Delta. In addition to population growth, other factors have directly influenced the fish and wildlife resources of the Delta. These factors include the following:

- Commercial and Sport Fishing
- Construction and Maintenance of Flood Controls Upstream of the Delta
- Construction and Operation of the Central Valley Project (CVP) and State Water Project (SWP) Storage Reservoirs
- Construction of the Sacramento and San Joaquin Deep-water Ship Channels
- Delta Reclamation, Dredging and Levee Construction
- Droughts
- Flood Control Projects in the Bay-Delta Watershed
- Floods
- Forest Practices in the Upstream Watershed
- Hydraulic Mining
- Increased Population and Recreational Pressures in the Delta
- Industrial and Municipal Waste Discharges to the Bay-Delta and the Upstream Waters
- Operation of the CVP Tracy and the SWP Banks-Delta Pumping Plants That Have Entrained Fish and Altered the Natural Flow Patterns of the Delta
- Reclamation of Swamp and Overflow Lands Upstream of the Delta
- Removal of Riparian Forest Along the Sacramento and San Joaquin Rivers

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 4

- Sacramento and San Joaquin River Flood Control Projects
- Upstream Diversions to Use and Storage
- Urban and Agricultural Run-off
- Wholesale Alteration of the Delta's Species Composition

Through the introduction of striped bass and other species, many of these factors substantially predated the recent declines in Bay-Delta fisheries and therefore were not direct causes of the declines. On the other hand, CVP and SWP pumping, increased commercial fishing, introduced species and higher levels of pollution are more recent developments that coincide with these fishery declines. The State Board therefore should focus its efforts on actions that will reverse the adverse effects of these recent developments." See comments of the Delta Tributary Agencies Committee Regarding the Key Issues Identified for the June 14, 1999 Workshop of the State Water Resources Control Board @ pages 1 and 2.

SEWD again suggests that CalFed analyze the cause of the Delta decline. Recognizing that the Delta decline and/or fish decline, did not occur all at once nor that various of the above-listed factors appeared on the scene all at once, would be helpful, so that all interest groups in California can begin to understand and deal with what are the predominate causes of Delta decline. SEWD views the majority of decline in the Bay-Delta as resulting from rapidly expanding urban growth around the five California Counties comprising the Bay-Delta System, the expansion of water exports of the CVP and SWP and the failure to complete the state water project as originally designed. Actually, it seems that CalFed chooses to avoid the "causation factor" by trying again to achieve a solution for the decline in fisheries and pollution problems in the Bay-Delta by developing these four (4) alternative means of conveying water either through or around the Delta and expanding "the beneficiary pays" theory from 5 California Counties to all 58 Counties.

And, now let's look further at the cost. The cost of the CalFed Bay-Delta Program was stated in your March 1998 documents to:

"Be affordable: solutions will be implemental and maintainable within the foreseeable resources of the program and stakeholders."
See page 5 of the Executive Summary to the '98 CalFed EIS/EIR.

Now, we see that the Executive Summary divides the 58 California Counties into a Bay-Delta System of 5 California Counties comprising 738,000 acres as the "geographic scope" and defines the Bay-Delta Problem; however, CalFed provides for a "solution generation" from all 58 California Counties. In fact, the 1999 Executive Summary considers: **"The high cost of solving**

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 5

Bay-Delta problems can be solved at a lower cost if the solutions are not limited to the 5 California Counties comprising the Bay-Delta.” Query! If you can't measure the cost of causing the Delta decline in, for instance, Modoc County, why should you pay?

A continuation of the 1999 Revised Phase II Report discusses the “finance plan” at pages 142-148 and determines a bottom-line philosophy that “the beneficiary pays.” If CalFed suggests that “the beneficiary pays” then we suggest that this “causation neutral analysis” simply isn't going to work if the beneficiary thinks that he/she is not the cause of the problem. At some point, CalFed has to confront the cause of the problem and develop some linkage towards payment; particularly when this Revised Phase II Report puts the total cost of completing Stage 1 costs at \$5,169,000,000 in current dollars (see page 145 of the CalFed Bay-Delta Programmatic EIS/EIR Revised Phase II Report) and suggests legislation to develop water user fees and required methods of water measurement throughout California. Since CalFed takes this approach of “the beneficiary pays”; then CalFed must tell us who is the “beneficiary” of CalFed action and conduct! **Is it a California farmer? Is it a water user? Is it a water diverter? Is it the 34 million plus people now living in California, consuming food products and enjoying the aesthetics of “environmental in-stream use”? Is it a fisherman? Who will pay this fee/tax?**

“The Draft Finance Plan compares several different financing mechanisms, all of which have been used to date and are expected to be used in the future, including state and federal appropriations, state general obligation bonds, state water and power revenue bonds (tied to SWP water and power rates), private financing, user fees and a broad-based Bay-Delta System Diversion Fee. . . . CalFed and CalFed Stakeholders have discussed the use of a broad-based Bay-Delta System Diversion Fee, particularly to finance some of the programs or actions with public benefits, such as the Ecosystem Restoration Program **This diversion fee would most likely apply to all major diverters of water from tributaries that flow into the Delta, as well as exporters of Delta water.** The Draft Finance Plan explores how such a broad-based diversion fee could be structured and what revenues could be expected for fees similar to those established in the CVPIA. The crediting of CVPIA revenues and other contributions to date would be an integral part of implementing any broad-based diversion fee.” See CalFed Bay-Delta Program Revised Phase II Report - June 1999 @ pages 143 and 144.

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 6

SUMMARY OF SEWD COMMENTS

SEWD intends to direct its specific comments to the following areas of the '99 CalFed EIS/EIR.

1. Water Transfers/Water Storage;
2. Water Rights;
3. Establishment of Upstream Habitat Areas and/or Meander Belts as part of the ERP;
4. Water Supply Reliability;
5. Watershed Management Plan; and
6. Estimated CalFed Stage 1 Costs, and what is the EWA?

1. WATER TRANSFERS/WATER STORAGE

There is no separate water storage booklet supporting the \$370,000,000 cost which CalFed estimates it will take to develop the "integrated storage investigation" program (of which \$300,000,000 is for south of Delta groundwater and north of Delta groundwater storage and only the remaining \$70,000,000 is for surface water storage). Alternatively, the water transfer supporting booklet is just a discussion of existing water transfer law and policy both state and federal. There is also an identification of issues which are unresolved and an identification of solution options which will require more significant work and development by CalFed and the legislature over the next seven years. There is however a development of new bureaucracy, i.e., the water transfer information clearing house which would, according to CalFed, create a nonregulatory water transfer information clearing house which would supposedly facilitate water transfers, perform data collection and establish technical baseline analysis. The proposed cost in current dollars of the water transfer program is only \$6,000,000 as CalFed says no "major capital investments" are necessary to implement water transfers.

Transferring Return Flow/Tailwater:

CalFed recognizes that saved or conserved water would not be transferrable if it does not meet the CalFed definition of real water; i.e., it is paper water. However, CalFed also recognizes that there is little financial incentive in the agricultural industry to adopt and implement conservation practices if CalFed simply applies "across the board" the "no injury" rule. For example, by applying the "no injury" rule to attempted transfers of return flow/tailwater; CalFed finds that the state and/or federal project would be injured by the attempt to transfer from one district to a downstream user district/individual even though that downstream user district/individual may be contiguous to the transferring district. CalFed refuses the transfer on the basis that injury would occur to the state and/or federal project through the transfer of return flow/tailwater to a downstream user because the state and/or federal projects are not compensated

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 7

(in dollars for water) and must, we assume, release stored water to add water to the system (even though return flow/tailwater gets back to the system). CalFed recognizes this problem, but how do they deal with the problem in the June 1999 Water Transfer Booklet? There is no solution from CalFed - they simply pose the problem for the rest of California to solve - we suppose:

“... others believe that the determination of consumptive use values and the application of the “no injury” rule is not sufficiently rigorous and results in permitted transfers that injure other downstream legal water users, particularly in terms of flow timing and water quality.

There is not disagreement that water consumed by the crop (ET of applied water) is part of the consumptive use measure and, if foregone, is transferrable. There is, however, some dispute about the transfer of surface water runoff (tailwater) that is not recaptured and re-used, and that would otherwise be available to a downstream user. In other words, if it is permissible for the water user to recapture tailwater for his own use, thereby depriving the downstream user of its benefit, can the user reduce tailwater production by irrigation system improvements and transfer the saved water? Under most interpretations of current law, the “no injury” rule does not apply in the first case, but it does apply to water transfers when a water right change in place or purpose of use is required.” See CalFed Water Transfer Program Plan: June 1999 @ page 3-9.

Interestingly, CalFed is taking a “no comment” position with the above statement. CalFed appears to forget that in their own discussion paper on water transfers of July 17, 1997 @ page 6; CalFed determined that the “no injury” rule applicable to conserved water transfers should first be analyzed and the finding made that the “injury” is either significant, avoidable or acceptable. Certainly conserving tailwater should be an acceptable method of developing water for transfer, but CalFed appears to have prejudged that issue with the above comment which is contrary to the CalFed Water Use Efficiency Plan Booklet which finds that return flow/tailwater is the most efficient use of agricultural water in the Sacramento Valley.

“Typically, losses associated with agricultural water use in this region tend to return to the system of rivers, streams and aquifers. Re-use of these losses is widely practiced. The region does not have significant irrecoverable losses, although water quality degradation does occur. Much of the regions groundwater resources are recharged by annual over-irrigation and deep percolation of applied water as well as subsurface inflow from the surrounding mountain ranges. This water is pumped by many of the areas agricultural lands that are irrigated solely with groundwater. **In addition, tailwater from fields typically returns to streams and becomes part of the in-stream flow diverted**

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 8

from another farm, wetland or city somewhere downstream.”
See Draft Water Use Efficiency Program: June 1999 @ page 4-36.

Encouraging Voluntary Water Transfers but Supporting a Reallocation of Water Rights in Phase 8:

Additionally, it seems that CalFed chooses to encourage water transfers and conjunctive use programs on a voluntary basis while the SWRCB plans to reallocate water supplies in Phase 8 of the Bay-Delta process commencing sometime in the year 2000. The logic of giving up water supplies on a voluntary basis for whatever reason (to aid farmers or urban users with insufficient water supplies to the south, repel salinity in the Delta, assist endangered fish like the Delta smelt, winter-run chinook salmon, striped bass, etc.) is just not sustainable when threatened with the SWRCB's administrative taking of water supplies which are clothed with a property right and have been reasonably and beneficially used to produce agricultural products for over a century.

We ask again if a power routinely exists in the SWRCB to reallocate water supplies, how does CalFed assume that public consensus will voluntarily develop to make the kinds of sacrifices, to expend the kind of funds, and to take the steps that will have to be taken to undertake the CalFed Program (which is now projected to cost \$5,169,000,000). If a large base of the commentators on the CalFed Program, particularly environmental elements, have their assumptions enforced so that water could simply be taken as a matter of a broad interpretation of the Public Trust Doctrine, why would any substantial number of voters, tax payers, or other elements of society that must support the CalFed Program agree that such a program and its cost be undertaken? Unless CalFed and the SWRCB recognize the property right aspect of water rights encumbered with the “reasonable and beneficial use” restraint, then how can anyone from a willing seller's standpoint, voluntarily engage in water transfers knowing that such transfers would be interpreted at least by the SWRCB in Phase 8, as a potential recognition that the water is unnecessary and is subject to take under the SWRCB Public Trust Jurisdiction. Any meaningful analysis of water transfers should review what impact the SWRCB's broad estimate of its Public Trust Jurisdiction has on the feasibility of a viable water transfer marketplace. Regardless of the lack of a “viable water transfer marketplace” due to the SWRCB's attitude that it may take water supplies by exercising its public trust jurisdiction; SEWD views water transfers as a “**Band-Aid**” to a long-term approach developed by immediately implementing water storage. Unfortunately, it appears that the '99 CalFed EIS/EIR Ecosystem Restoration Program Plan views “additional storage” as:

“CalFed is evaluating additional storage as one approach to increasing water supply reliability and providing in-stream flow benefits during periods of greater ecosystem need . . . new storage will be developed and constructed, together with aggressive implementation of water conservation, recycling and a protected water transfer market, as appropriate to meet CalFed Program goals.

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 9

“During Stage I, CalFed will evaluate and determine the appropriateness of surface water and groundwater storage, identify acceptable projects and initiate permitting of construction if program linkages and conditions are satisfied.” See pages 11 and 12 of CalFed Ecosystem Restoration Program Plan Volume 1 - June 1999.

It is SEWD's unequivocal position that increased storage is absolutely critical to the success of this long-term CalFed Project. Population in California is projected to exceed 47 million by the year 2020. See '99 CalFed EIS/EIR: Strategic Plan for Ecosystem Restoration: Appendix "A": Opportunities and Constraints @ pg. A-13. The \$70,000,000 you plan to use completing another surface water storage study in 1999 is not sufficient. Surface water storage facilities must be constructed and operable by at least 2005 in order to help bridge the gap between population increase and water demand. CalFed must support selected sites, whether on-stream or off-stream, for construction of new surface water storage facilities. For instance, the 29,600 acre Sites/Colusa Project having the storage capacity estimated at 3 million acre feet was chosen a number of years ago. Get on with it!

Water storage facilities will eliminate the need to use the **Band-Aid** “water transfer” method of possibly drying up one area of ground in this state to move water to another area. CalFed also might serve/store water in winter months to meet the ever-increasing population demands. SEWD again asks CalFed to provide a time-line for the building of either off-stream or on-stream storage facilities which time-line would appear in the Final EIS/EIR supposedly to be produced before the end of this century. **Finally, SEWD cannot support any of the four alternative conveyance support approaches (including the “Preferred Program Alternative”) through or around the Delta without a provision for surface water storage both north and/or south of the Delta. Also, please tell us why Los Banos Grande is not completed and operating?**

2. WATER RIGHTS

We believe that the entire CalFed documentation is biased in the nature of actions which are suggested to restore the Bay-Delta ecosystem particularly given the three competing interest groups for water supplies in California; i.e., 1) environmental, 2) agricultural (water right holders as opposed to state contract holders), and 3) urban. Unfortunately, we continue to see this form of “bias” in the supporting documentation to the four alternative conveyance approaches set forth in the '99 CalFed EIS/EIR.

“Several human activities in the Bay-Delta Watershed have irreversibly altered important ecological processes (see Appendix “A”). . . . See: Strategic Plan for Ecosystem Restoration @ pg. 5. Similarly, the irreversible changes that have occurred to hydrology and ecology of the Bay-Delta System must be recognized so that restoration goals are realistic. For example, the hydrology of the Bay-Delta System has been fundamentally transformed by massive

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 10

reservoirs and diversions. Reservoir storage capacity in the Sacramento-San Joaquin River System now totals about 30 million acre feet (MAF), with storage equivalence to over 80% of run-off in the Sacramento River Basin and nearly 140% of San Joaquin River Basin run-off (San Francisco Estuary Project 1992, Bay Institute 1998). As a result, frequent floods (important for maintaining channel form, cleaning spawning gravels, and providing periodic disturbances needed to maintain native species) have been eliminated or drastically reduced on many rivers. Most of these reservoirs are permanent, at least for the lifetimes of the structures, so restoration efforts must be designed to account for the changes brought by the dams or must involve changes in the operations of the reservoirs. Although dam removal may be possible (with considerable ecological benefits) in a limited number of cases, as is now being considered for Englebright Dam on the Yuba River, in most cases restoration actions must be designed with the reservoirs in mind. [emphasis added] See Appendix "A" to Ecosystem Restoration Program Plan, Strategic Plan for Ecosystem Restoration @ A-1.

Appendix "A" reeks with a "return to nature approach" which is simply contrary to law and logic given the economics of the pre-1914 Water Rights System which was authorized in California to allow for the development of real property for agricultural production and ensures the stability of property rights given the tremendous population increases and land use changes which this state continues to endure. It's almost as if Appendix "A" would turn this state back 150 years to a date when "cattle were introduced in 1770 and rapidly expanded under Spanish rule, etc." See Appendix "A" @ A-7. For example, Appendix "A" describes "ecological transformations following colonization and threshold events leading to present conditions."

Then too, the attitude projected by this '99 CalFed EIS/EIR Strategic Plan for Ecosystem Restoration at Appendix "A" continues to avoid discussion of compliance with water rights and water contracts and instead states the following:

"IMPORTANT LEGISLATIVE ACTIONS AFFECTING ENVIRONMENTAL TRENDS - 1995 WATER QUALITY CONTROL PLAN:

In 1995, the SWRCB adopted a water quality control plan for the Bay-Delta that includes rules governing Delta exports and Delta outflows. This plan intended to maintain salinity in the Delta at levels needed to maintain the health of the ecosystem. Since 1995, it has been the responsibility of CVP and the State Water Project (SWP) to comply with these rules, but SWRCB is now holding

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 11

hearings to decide how the responsibility for compliance should be allocated among all water users in the Bay-Delta System. The result of these hearings will most likely lead to increases in in-stream flows in most, if not all, of the tributaries to the Delta. This change would improve conditions for fish and other aquatic species in those tributaries. [emphasis added] See page A-15 of Appendix "A".

According to the June 1999 CalFed Executive Summary, the SWRCB is one of the 15 state and federal agencies participating in CalFed. Now we have CalFed pre-judging the Bay-Delta Water Right Hearings by making a statement (which we have underscored in the above quotation taken from page A-15 of Appendix "A" of the Strategic Plan for Ecosystem Restoration) which essentially tells us that the reallocation of water rights and water supplies which will increase "in-stream flows in tributaries to the Delta" is "going to happen." If the SWRCB as one of the 15 agencies participating in CalFed is making this comment, Query! Why do we need Phase 8 of the Bay-Delta Hearings if CalFed (the SWRCB is a member) knows the result?

It is also interesting to note that chapter eight of the '99 drafted EIS/EIR entitled "Compliance With Applicable Laws, Policies, Plans and Regulatory Framework" spends 27 pages discussing every law and regulation which supposedly applies to the CalFed Program including Public Trust (the 1983 National Audubon Decision) and the Racanelli Decision (U.S. v. SWRCB-1986) but fails to discuss either D990 or D1275 which allowed the United States Central Valley Project and the State of California State Water Project respectively to build Shasta Dam and Oroville Dam provided that both federal and state entities be responsible for water flow, water quality, and fish and wildlife flow objectives within the Bay-Delta.

"During the hearing the Board indicated that any permits issued would specify the minimum water quality to be maintained in the Delta, which quality would be equal to or better than that agreed upon by the Department and the Sacramento River and Delta Water Association, as set forth in "Delta Water Quality Criteria" dated November 19, 1965 (SRDWA Exh. 17).

"Reasonable protection to the Delta Water Users requires some winter flushing flows, a fairly high quality of water during the early irrigation season, and no degradation of the quality of water below natural conditions during the summer and fall seasons when the natural flow is low. . . .

19. The State Water Rights Board reserves continuing jurisdiction over these permits for the purpose of formulating or revising terms and conditions relative to salinity control in the

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 12

Sacramento-San Joaquin Delta. Permittee shall, on or before January 1, 1968, and each six months thereafter, submit to the Board a written report as to the progress of negotiations relative to agreement between Permittee and water users in the Delta and in northern Contra Costa County. The Board will, prior to June 30, 1970, hear, review, and make such further order relative to salinity control as may be required.

27. The State Water Rights Board reserves continuing jurisdiction over these permits for the purpose of formulating terms and conditions relative to flows to be maintained in the Feather River and in the Delta for the protection of fish and wildlife.”
See D1275 @ pages 18, 19, 42, and 45.

Regardless of the two Federal and State Water Storage Projects built in the 1940's and 1960's respectively; the '99 CalFed EIS/EIR Program documents continue to ignore federal and state responsibilities and the property right aspect of California's long established water right system. In essence, CalFed refuses to recognize that people “reasonably and beneficially acquired and used water supplies” to produce crops for people and that California's economy was historically developed and is dependent upon the continuation of this supply (California is the 7th largest agricultural producing entity in the world).

Perhaps it is the failure to mention D990 and D1275 in chapter eight in the '99 CalFed EIS/EIR which continues this attitude that all California streams, rivers and tributaries (and not just the federal and state projects as required by D990 and D1275) must contribute water for in-stream uses (Delta outflow). The June 1999 documentation does not change its definition of “Delta outflow” as being the total stream flow from tributaries minus reservoir storage and water diversions. **Indeed, CalFed continues this assumption that reservoir storage was not a fact of Delta out-flow when, in fact, D990 and D1275 allowed the building of the federal and state reservoir storage projects on the condition that both reservoir storage projects would be a contributor to Delta outflow as necessary to preserve Delta water quality.**

It has always been and is now the position of SEWD that the CVP and SWP are required to make releases for purposes of Delta outflow.

Finally, the '99 CalFed EIS/EIR fails to describe a third very important and developed groundwater right in California. Paragraph 8.2.9 defines riparian and appropriative water rights but fails again to recite and define groundwater right law in California; i.e., the California Correlative Rights Rule which entitles each overlying landowner to a “fair and just portion” of a common pool. Again, this June 1999 CalFed documentation must explain that there is a difference between out of Basin and in-Basin groundwater pumpers in California such that all in-basin pumpers are subject to

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 13

the Correlative Rights Rule but out of Basin pumpers are subject to the Appropriative Rights Rule requiring that two conditions be met: 1) there must be surplus water which is defined as water in excess of the safe annual yield as described in the City of Los Angeles v. City of San Fernando case (1975) 14 Cal 3rd 199, and 2) surplus water must not be needed by overlying owners.

3. MEANDER BELTS

SEWD has great concern with respect to the aggressive development and maintenance of "Meander Belts" within. Why? "Stream meander" is defined as:

"In their flood plains, Central Valley rivers naturally meander through flood plain sediments, progressively eroding the next bank while adding to the previous bank. This process, called a stream meander, occurred in the stream corridors of the Feather, Yuba and Bear Rivers. A natural stream meander process in the Lower Feather, Yuba and Bear River flood plains provides much of the habitat needed to support healthy riparian systems, wildlife, and aquatic species. Today, the natural meander process in each stream is inhibited by dams, bank protection, bridge abutments, flood control levees, and the reduction or elimination of natural course sediments now trapped behind the large dams. In some places, bank erosion occurs, the lack of sediment precludes adding to the previous banks. **The vision is to restore a portion of the natural meander to the rivers by setting back levees where they are necessary and by moving structures from the flood plain where possible.**" See Volume II: Ecosystem Restoration Program Plan: Feather River/Sutter Basin Ecological Management Zone Vision: June 1999, at pg. 282.

Again, we see the expressed attitude of CalFed in adopting a "return to nature" approach which ensures that a stream meander zone interrupts/prohibits human landowner activities such as construction of levees to protect planted crops, orchards and in some situations existing homes.

Why does CalFed not recognize the tremendous existing benefit that SEWD provides to wildlife habitat and waterfowl with its current agricultural crop production activities which not only provide food for the world population but also tremendous benefits to nature. Additionally, many stressors have been eliminated from the rice cultural practices. For instance, wetland acreage has doubled in the last six years. Irrigation water provides much support to state and federal wetland projects.

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 14

The report fails or perhaps just refuses to analyze how the implementation of this "return to nature" meander zone concept would benefit (instead of destroy) the existing agricultural, environmental, and human infrastructure such as existing homes, levees, bridges, culverts, distribution channels and canals, etc.

There is simply a continuation of the back to nature approach such as eliminate stressors to meet spring-run chinook salmon and steelhead population levels as of late 1960's and early 1970's.

"Populations of a number of species have declined sufficiently since the 19th century to warrant their listing under the federal Endangered Species Act of 1973. ... Perhaps the most significant of these listings have been those for winter-run chinook salmon, Delta smelt, and steelhead trout because their recovery is likely only if there is a significant reallocation of water for environmental purposes, as well as significant improvements in their remaining habitats." See Strategic Plan for Ecosystem Restoration: Appendix "A" Opportunities and Constraints @ pg. A-13.

"The vision for chinook salmon is to recover all stocks presently listed or proposed for listing under ESA and CESA, achieve naturally spawning population levels that support and maintain commercial, ocean and inland recreational fisheries. Spring- and fall-run chinook salmon will benefit from improved flows. Late-winter and spring flows will provide attraction for upstream migrating adult spring chinook and downstream migrating spring- and fall-run chinook." See Volume II, Ecosystem Restoration Program Plan: Feather River/Sutter Basin Ecological Management Zone Vision: June 1999, at page 285.

Since the population increase in California alone has increased by well over 20 million people since the late 1960's; we question the wisdom of this CalFed approach. We must again point out that SEWD, Sutter County and the Sierra Basin has benefitted significantly from the existence and development of agricultural and environmental habitat areas such as the Butte Sink and Sutter Refuge as well as other state, federal, and privately owned areas. But the benefit which SEWD has received includes the existence of water supply projects which include delivery and distribution, canals, lift structures and the application of water to various row crops, field crops and orchards with an implementation of drainage water reuse and operational spills which incidentally, CalFed believes are wasteful uses of water.

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 15

Agriculture infrastructure such as bridges, canals, channels, canal berms, levee roads and lift stations are all necessary elements within SEWD.

4. WATER SUPPLY RELIABILITY: PREFERRED PROGRAM ALTERNATIVE

It appears from both the historical and current operation of Delta Water Delivery Systems, (particularly with the on-going population increase in California exceeding 500,000 people per year) that the export systems cannot officially operate without some type of water delivery system that either gets water through the Delta in the most efficient way possible to Clifton Court Forebay and the Tracy Pumps or around the Delta to Clifton Court Forebay and the Tracy Pumps. Whether you phrase this type of facility as "an isolated Delta Facility," "through Delta Facility" or "Peripheral Canal" etc. has no bearing on the bottom line which is the efficient operation of getting water through the Delta.

Analyzing the adjoining three alternatives that are proposed together with the "Preferred Program Alternative"; it seems that again CalFed doesn't want to politically offend anyone or more of the many participants to California's water system by stating that an "isolated Delta Facility" is still on the "drawing board"; however, the Preferred Program Alternative is closest to Alternative one which is enlargement of South Delta Channels particularly installing a barrier at the head of Old River with the installation of a 15,000 cfs fish screen acting as a "single screen" for the state and federal pumps at the head of CCFB and other environmental based acts such as reduction of impacts of pesticides, bromides, salinity, mercury, selenium, turbidity, etc.

Finally, SEWD has no objection to the "Preferred Program Alternative; however, SEWD believes that CalFed must recognize that any through Delta Facility or isolated Delta Facility must only be constructed and/or installed following the construction and installation of off-stream reservoirs both north and south of the Delta. Since CalFed throws \$910,000,000 to ecosystem restoration and \$2,000,000,000 to water use efficiency and recycling matters while only allocating \$70,000,000 of a \$5,169,000,000 cost estimate to surface storage study; we presume that CalFed is again trying to avoid the critical need for surface water storage to meet California's predicted population increase which exceeds 47 million by the year 2020. **Therefore, if SEWD assumes from the '99 CalFed EIS/EIR documentation that surface water storage is not a viable alternative; SEWD will not support the "Preferred Program Alternative."**

5. WATERSHED MANAGEMENT PLAN

We find nothing substantive in this '99 CalFed EIS/EIR documentation regarding evaluation of the Watershed Management Plan as one of the eight program elements which support each of the four conveyance alternatives. The problem we find is that the Watershed Management Plan approach, although projected to be at a current dollar cost of \$210,000,000 (see CalFed Bay-Delta Program Revised Phase II Report June 1999 @ page 145) proposes to

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 16

spend these dollars accumulated from state, federal agencies, water districts and water user fees to accomplish the following:

"However, the Watershed Program is not designed to implement specific actions identified in other program plans; rather, it is the Watershed Program's intention to recognize and articulate relationships among the common programs, as well as between those programs and other efforts in the Bay-Delta Watershed. Identification will help provide opportunities to develop new partnerships. It is not to identify areas of delegation of responsibilities or projects from one program to another." See Revised Draft Watershed Program Plan: June 1999: @ page 3-1.

6. ESTIMATED CALFED STAGE 1 COSTS AND WHAT IS THE EWA?

SEWD is concerned that without committing to construct and install another water supply source for storage both north and/or south of the Delta; CalFed will begin implementing a financing plan proposed at \$5,169,000,000 in current dollars. How in the world can CalFed justify spending \$2,000,000,000 for water use efficiency and recycling methods, another \$910,000,000 for ecosystem restoration and finally another \$913,000,000 for through Delta Conveyance Facilities yet only commit to spending another \$70,000,000 to prepare additional studies which would presumably show (from CalFed's perspective) that additional surface storage is NOT warranted or necessary? SEWD Members, landowners, homeowners, rural communities, farmers and ranchers need your explanation!

"The bottom line philosophy of CalFed finances is: "the beneficiary pays." Historically, federal water projects were subsidized at below market interest rates or at no interest resulting in low levels of effective cost sharing. But since the 1980's, CalFed says federal agencies are requiring more non-federal cost-sharing. Also, CVPIA of 1992 introduced: 1) tiered water rates, 2) mitigation and restoration payments, and 3) a restoration fund for the environment." See CalFed Bay-Delta Program Revised Phase II Report - June 19, 1999; @ page 141.

CalFed's Finance Program intends to implement new legislation to establish water user fees which with implementing legislation will presumably have a "benefit's analysis and cost allocation" which will apportion fees and costs to pay for the \$5,169,000,000 in total costs including CalFed's \$2,000,000,000 Water Use Efficiency and Recycling Program and CalFed's \$910,000,000 Ecosystem Restoration Program. **How do you propose to measure these costs? Do you propose a water right holder diversion fee like the \$5 per acre/foot fee levied in 1992**

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 17

by D1630? We understand that this is just a Programmatic EIS/EIR but since CalFed wants to have a financing plan in place at the time it signs the ROD (Record of Decision) by June of 2000 we feel it's appropriate to ask these questions?

What is the EWA? (Environmental Water Accounts)

We understand that the EWA is a concept that:

"The EWA is based upon the concept that flexible management of water could achieve fishery and ecosystem benefits more efficiently than a completely prescriptive regulatory approach." See CalFed Bay-Delta Program Revised Phase II Report - June 19, 1999 @ page 95.

Although the EWA seems a creative approach to providing water supplies perhaps for Delta outflow; more information is needed on storage location and capacity of EWA waters and funding. Additionally, final authority over allocation of EWA water and money cannot be left solely in the hands of NMFS, USFWS and DFG. Assuring compliance with ESA rules must be shared by urban and agricultural water users as well as the environmental enforcing agencies.

Most importantly, however, in concluding SEWD comments to the '99 CalFed EIS/EIR; is SEWD's perception of the lack of any meaningful attempt by CalFed to construct and install additional storage facilities either north and/or south of the Delta prior to implementing either a through Delta or isolated Delta Facility conveyance approach. Again, SEWD opposes any through or around Delta conveyance approach without prior construction and installation of surface water storage facilities.

We look forward to receiving a response to this letter commenting on the '99 CalFed EIS/EIR.

CONCLUSION

We conclude our comments by asking the following seven (7) series of questions:

1. **Water User Fees/Diversion Fee/Tax!** The revised Phase II Report and certain portions of different supporting program documents generally describe a financing plan to accumulate \$5,169,000,000 current dollars (to June 1999 standards) to finance the CalFed Program. **Are the diversion fees, water user fees, etc. imposed on: (a) existing water right holders; (b) exporters; (c) urban users; (d) environmental in-stream users or those who benefit**

from environmental in-stream uses; (e) fishermen; or (f) the in excess of 34 million people now living in California, etc? What are the amounts of the fees? Are they annual? Do you propose a water right holder diversion fee similar to the \$5 per acre/foot fee levied in 1992 by D1630?

2. **"The Beneficiary Pays"** Who are the beneficiaries of the CalFed Program? Are they environmental in-stream users or those who benefit from such uses? Are they landowners, water diverters, water right holders, urban users, all living persons in California, etc.? Can you measure or define the term "beneficiary" by the proportionate responsibility in causing some decline in the Bay-Delta Ecosystem? Do you foresee giving a "beneficiary" the right to respond to some proposed "cost" which is imposed upon him/her as a beneficiary of the CalFed action and conduct?
3. **Conserved Water and Water Transfers:** Explain how you would apply your water transfer criteria to implement the "no injury rule" and prohibit the historical practice of transferring return flow/tailwater as an efficient method of irrigation in the agricultural sectors as discussed on pages 6, 7 and 8 of our comments.
4. **Water Storage:** Since you've chosen to allocate only \$70,000,000 of your proposed \$5,169,000,000 funding estimates for this CalFed Program to investigate water storage; explain or justify refusing to recommend construction and operation of storage facilities either north and/or south of the Delta given your own estimates that California will exceed 47 million people by the year 2020 and a strong likelihood that water exporting, increased commercialization of fisheries and continued introduction of introduced species in the Delta will continue.
5. **The Adaptive Management Concept:** CalFed chooses to adopt the Adaptive Management Concept as an essential element of every program concept which concept is essentially governance by "trial and error." CalFed states that:

"... There is a need to constantly monitor the system and adapt the actions that are taken to restore ecological health and improve water management." See CalFed Bay-Delta Program Revised Phase II Report @ page 152.

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 19

Such Adaptive Management Program Concept is reflected in the assumptions CalFed makes in the following program quotations set forth in these comments: 1) Page 5 where CalFed suggests a broad-based diversion fee to exact fees similar to those in the CVPIA; 2) Pages 8 and 9 where CalFed suggests new storage will be developed together with aggressive implementation of water conservation and a protected water transfer market but only as appropriate to meet CalFed program goals; 3) Page 10 where CalFed assumes Dam removal may be possible (with considerable ecological benefits) as is being considered for Englebright Dam on the Yuba River; 4) Page 14 where CalFed assumes that the recovery of ESA listed species of fish is only possible if there is a significant reallocation of water for environmental purposes. These broad-based assumptions, suggestions, and determinations made by CalFed in this second version (June 1999) of a programmatic EIS/EIR certainly do not meet the standards required for approving any activity within the scope of this programmatic EIS/EIR and will be actively opposed by SEWD should such implementation be pursued by CalFed. See 14 California Code Regs. §15168(c)(1-2).

6. **SWRCB and the Bay-Delta Hearings:** Please explain why we need Phase 8 of the Bay-Delta Hearings if the SWRCB as a member of CalFed made the following statement:

"The result of these hearings will most likely lead to increases in in-stream flows in most, if not all, of the tributaries to the Delta. This change would improve conditions for fish and other aquatic species in those tributaries." See Page A-15 of Appendix "A" to the 1999 CalFed EIS/EIR Strategic Plan for Ecosystem Restoration.

7. **Increased Reliance on Groundwater Supplies Due to Lack of Surface Water Storage:** Please explain how targeting 1.36%; i.e., \$70,000,000 of CalFed's projected total cost of \$5,169,000,000 in June 1999 dollars to create the "Integrated Storage Investigation" Committee, reduces reliance on California's productive groundwater basins to meet increasing water supply shortfalls caused by: 1) an expected population increase to 47.5 million people in the year 2020; 2) increased commercialization of harvestation of fisheries; 3) continued introduction of introduced species into the Delta; and 4) environmental demand for increased "in-stream" water to foster a "return to the nature of the 60's and 70's."

To: CALFED Bay-Delta Program
Re: Comments of Sutter Extension Water District
Board of Directors to the June 1999 CalFed
Bay-Delta Second Draft Programmatic EIS/EIR
Date: September 21, 1999

Page 20

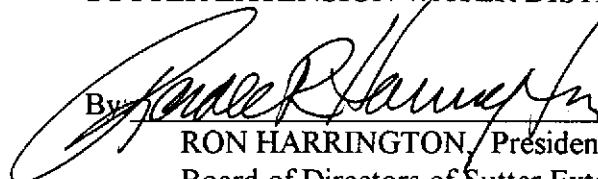
We want CalFed to understand that SEWD wants to be part of the solution and not part of the problem in trying to solve the physical, environmental and alleged deteriorating fishery "woes" of the 738,000 acre Bay-Delta Geographic Area. However, the CalFed documentation and program goals must recognize that existing land and water development with SEWD, Sutter County and Sutter Basin have maintained streams, tributaries and rivers for the benefit of existing wildlife vegetation, fish and waterfowl. To do otherwise is to contradict existing water right law and continue to foster this illogical position of a "return to nature" approach to dealing with: 1) rapidly increasing urban growth; 2) a population estimate in California which exceeds 47 million by the year 2020; 3) increased commercial harvest of California's fisheries; 4) the continued introduction of introduced fish species into the San Francisco Bay-Delta; and 5) environmental demand for increased "in-stream" water to foster a "return to the nature of the 60's and 70's."

Please be assured that SEWD will actively oppose this second June 1999 version of the CalFed Programmatic EIS/EIR unless we receive: 1) Meaningful answers to this letter specifically including our seven (7) series of questions posed in our conclusion, and 2) CalFed provides SEWD a time-line for the building of either off-stream or on-stream surface water storage facilities which will demonstrate some construction and/or operation prior to December 31, 2005.

Realizing that this '99 CalFed EIS/EIR is programmatic and not site-specific; the attitude which is conveyed in the 4,700+ pages of documentation is more amorphous than factual and/or objective.

Sincerely,

SUTTER EXTENSION WATER DISTRICT

By 
RON HARRINGTON, President of the
Board of Directors of Sutter Extension Water
District pursuant to the Supporting Resolution
adopted on September 21, 1999.

RH/kc

cc: Sutter County Board of Supervisors
Association of California Water Agencies
Northern California Water Association
Senator Tim Leslie
Assembly Member Sam Aanestad
Assembly Member Richard Dickerson
Assembly Member Helen Thomson
Congressman Doug Ose